

CHAPTER 20.91

USE PERMITS AND VARIANCES

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20.91.010 Purpose

This article provides the flexibility in application of land use and development regulations necessary to achieve the purposes of this code by establishing procedures for approval, conditional approval, or disapproval of use permit and variance applications.

Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.

Variances are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site. Variances may be granted with respect to property development regulations and performance standards, but do not extend to land use regulations.

20.91.015 Use Permit or Variance Requisite to Other Permits

No building permit or certificate of occupancy shall be issued in any case where a use permit or variance is required by the terms of this code unless and until such use permit or variance has been granted by the Planning Director or the Planning Commission or by the affirmative vote of the City Council on appeal or review and then only in accordance with the terms and conditions of the use permit or variance granted.

20.91.020 Application for Use Permit or Variance

An application for a use permit or variance shall be filed in a manner consistent with the requirements contained in Chapter 20.90, Application Filing and Fees. If the application is for a use permit in a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the application shall be accompanied by the additional information specified in Chapter 20.91A.

20.91.025 Duties of the Planning Director and the Planning Commission

- A. **Authority.** The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits or variances, unless the authority for an administrative decision on a use permit is specifically assigned to the Planning Director in the individual chapters of this code.

Exception. The City Council shall have final decision-making authority on the applications for use permits and variances filed concurrently with amendments to the general plan, zoning code, or a planned community development plan or with a development agreement.

- B. Rendering of Decision. After the conclusion of the hearing on any application for a use permit or variance, the Planning Commission shall render a decision within thirty-five (35) days. Where the authority for an administrative decision on a use permit is assigned to the Planning Director, the Planning Director shall render a decision within fourteen (14) days of the acceptance of a completed application.
- C. Report to the Planning Commission and City Council. The Planning Director shall report the discussion of the Planning Commission on a use permit or variance to the City Council at the next regular meeting or within 5 days of the decision, whichever occurs first. Upon rendering a decision on a use permit, the Planning Director shall report to the Planning Commission and the City Council at the next regular meeting or within 5 days of the decision, whichever occurs first.
- D. Notice of Decision. Upon the rendering of a decision on a use permit by the Planning Director, a notice of the decision shall be mailed to the applicant and all owners and occupants of property within 300 feet of the boundaries of the site.

20.91.030 Notice and Public Hearing

- A. Public Hearings. The Planning Commission shall hold a public hearing on an application for a use permit or variance. Public hearings are not required for applications where the authority for an administrative decision on a use permit is assigned to the Planning Director.

- B. Timing of Hearings. A public hearing shall be held on all use permit and variance applications, except as otherwise provided in this chapter, within sixty (60) days after the acceptance of a completed application.
- C. Required Notice. Notice of a public hearing or an administrative decision shall be given as follows:
1. Mailed or Delivered Notice.
 - a. Residential Districts. At least 10 business days prior to the hearing or an administrative decision, notice shall be mailed to the applicant and all owners and occupants of property within 300 feet of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses.
 - b. Nonresidential Districts. At least 10 business days prior to the hearing or an administrative decision, notice shall be mailed to the applicant and all owners of property within 300 feet, excluding intervening rights-of-way and waterways, of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses.
 - c. Notice To Occupants. Notice to occupants shall be accomplished by mailing notice to each property address within 300 feet of the boundaries of the site with notice addressed to "occupant." It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners and property addresses within 300 feet of the boundaries of the site as required by this section.
 2. Posted Notice. Notice shall be posted in not less than 2 conspicuous places on or close to the property at least 10 business days prior to the hearing or the administrative decision.
 3. Published Notice. Notice shall be published in at least one newspaper of general circulation within the City, at least 10 business days prior to the hearing.
- D. Contents of Notice. The notice of public hearing or of the decision of the Planning Director shall contain:
1. A description of the location of the project site and the purpose of the application;
 2. A statement of the time, place, and purpose of the public hearing or of the

purpose of the administrative decision;

3. A reference to application materials on file for detailed information; and
4. A statement that any interested person or authorized agent may appear and be heard at the public hearing or their rights of appeal in case of administrative decisions.

- E. Continuance. Upon the date set for a public hearing before the Planning Commission, the Planning Commission may continue the hearing to another date without giving further notice thereof if the date of the continued hearing is announced in open meeting.

20.91.035 Required Findings

The Planning Commission or the Planning Director, as the case may be, shall approve or conditionally approve an application for a use permit or variance if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or the Planning Director finds:

A. For Use Permits.

1. That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.
2. That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.
3. That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.
4. If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

B. For Variances.

1. That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this

code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights of the applicant.
3. That the granting of the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.
4. That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

20.91.040 Conditions of Approval

The Planning Commission or the Planning Director, as the case may be, may impose such conditions in connection with the granting of a use permit or variance as they deem necessary to secure the purposes of this code and may require guarantees and evidence that such conditions are being or will be complied with, including but not limited to management and operations plans. Such conditions may include, but are not limited to, requirements for off-street parking facilities and prohibitions against assembly uses as determined in each case.

20.91.045 Effective Date

Use permits and variances shall not become effective for fourteen (14) days after being granted, and in the event an appeal is filed or if the Planning Commission or the City Council shall exercise its right to review any such decision under the provisions of Chapter 20.95, the permit shall not become effective unless and until a decision granting the use permit, or variance is made by the Planning Commission or the City Council.

20.91.050 Expiration, Time Extension, Violation, Discontinuance, and Revocation

- A. Expiration. Any use permit or variance granted in accordance with the terms of this code shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:
 1. A grading permit has been issued and grading has been substantially completed; or

2. A building permit has been issued and construction has commenced; or
3. A certificate of occupancy has been issued; or
4. The use is established; or
5. A time extension has been granted.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

- B. Time Extension. The Planning Director may grant a time extension for a use permit or variance for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Planning Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date.
- C. Violation of Terms. Any use permit or variance granted in accordance with the terms of this code may be revoked if any of the conditions or terms of such use permit, or variance are violated, or if any law or ordinance is violated in connection therewith.
- D. Discontinuance. A use permit or variance shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days.
- E. Revocation. Except as otherwise provided for in this Title, procedures for revocation shall be as prescribed by Chapter 20.96: Enforcement.

20.91.055 Amendments and New Applications

- A. Amendments. A request for changes in conditions of approval of a use permit or variance or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or additions to the plan or the conditions of approval, and are consistent with the intent of the original approval.
- B. New Applications. If an application for a use permit or variance is disapproved, no new application for the same, or substantially the same, use permit or variance shall be filed within one year of the date of denial of the initial application unless the denial is made without prejudice.

20.91.060 Rights of Appeal

- A. Appeals. Decisions of the Planning Director may be appealed to the Planning Commission and decisions of the Planning Commission may be appealed to the City Council.
- B. Procedures. Except as otherwise provided for in this Title, procedures for appeals shall be as prescribed by Chapter 20.95: Appeals.